

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION**

WRIT PETITION NO.2071 OF 1998

Charan Parashramji Meshram
Aged 48 years, Joint Director
of Animal Husbandry, Office of
Commissioner of Animal Husbandry
(Maharashtra State) Central
Building, Pune 411 011.

..Petitioner

Vs.

1.State of Maharashtra
through the Secretary
Department of Animal Husbandry
Mantralaya, Bombay 400 032.

2.The Commissioner of Animal
Husbandry (Maharashtra State)
Central Building, Pune 411 001.

3.Dr. V.V. Deshpande
Joint Director of A.H.
Disease Investigation Section
Aundh, Pune 411 007.

4.The Secretary
Maharashtra Public Service
Commission, Bank of India Building
Fort, Bombay 400 023.

..Respondents

Mr.S.P. Saxena Advocate for Petitioner

Mrs. S.S. Bhende, A.G.P. for Respondent nos.1 to 4

**CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 3RD FEBRUARY, 2005.**

JUDGMENT (PER SHRI JUSTICE REBELLO)

1. Petitioner is presently working as Joint Director of animal husbandry, in the Maharashtra Animal Husbandry services under Respondent no.2, Pune. The petitioner holds qualification of B.Sc.(Agriculture) and was initially appointed as

Assistant Fodder Development Officer on 7th April, 1972 in Animal Husbandry Department of Respondent no.1. Thereafter he was promoted as Fodder Development Officer and subsequently to the post of Deputy Director of Animal Husbandry (Feed and Fodder). It is the case of the petitioner that the posts in which he works have separate seniority lists and provides for promotion channels upto the post of Deputy Director (Fodder) of Animal Husbandry. In the same cadre there are other employees in the Maharashtra Animal Husbandry Services possessing qualification of B.V.Sc. or equivalent, and their seniority and channels were also separate upto the post of Deputy Director of Animal Husbandry under Maharashtra Animal Husbandry Services Cadre.

. The next higher post is of Joint Director of Animal Husbandry. As the petitioner was not considered for the said post he filed O.A. No.345 of 1992 challenging his non-consideration. His O.A. was allowed and direction was issued to revise seniority list and include the names of persons like petitioner even if they do not have veterinary qualification. A further direction was issued for holding a review of the departmental promotion. That judgment consequent to challenges being rejected was implemented and the petitioner was

promoted along with other Officers to the post of Joint Director. The order was issued on 31st January, 1997 but it was agreed to give a deemed date of promotion to the post of Joint Director with effect from 1994. The next promotional post is that of Additional Director of Animal Husbandry.

2. Recruitment to the post of Additional Director of Animal Husbandry was based on the rules dated 16th October, 1989. In terms of the said rules posts have to be filled in either by promotion of a suitable person on the basis of positive merit from amongst the persons holding the post of Joint Director of Animal Husbandry in Maharashtra Animal Husbandry Services Class I or by appointment of a member of IAS Cadre as per the Rules framed under Article 309 of Constitution of India. It is the case of the petitioner that he being the senior most was eligible for consideration for promotion. Mr. P.S. Malkhede who was working as Additional Director of Animal Husbandry superannuated from 31st January, 1997 and as such a vacancy arose to that post from 1st February, 1997. The case of the petitioner is that as such the said post had to be filled in by promotion with effect from 1st February, 1997 itself. The Respondent no.1 due to some vested interest did not convene DPC meeting to fill up the post of Additional Director of Animal

Husbandry in February, 1997. The petitioner submitted a representation to Respondent no.1 for consideration. No action was taken and the petitioner was holding additional charge of the post of Additional Director. It is the petitioner's case that it was on account of pressure brought on the respondent no.1 by the other Veterinary Officers, who did not want that the petitioner to be promoted. On account of failure by the respondent to fill in the post, the petitioner preferred O.A. No.221 of 1997 before MAT. During the pendency of the application respondent no.1 was pleased to issue fresh recruitment rules dated 6th November, 1997 also under Article 309 of the Constitution of India. The new rule superseded the earlier rules of 1982 as amended in 1989 for recruitment of post of Additional Director of Animal Husbandry. Under the new rules the eligibility qualifications were set out. The Petitioner would not be eligible. According to the petitioner the rules were made prospective from 6th November, 1997. The Tribunal after hearing the petitioner and respondent nos.1 and 2 and considering the contention as advanced dismissed O.A. subsequent to that the respondent no.1 issued an order promoting respondent no.3 as Joint Director of Animal Husbandry who according to the petitioner is admittedly junior to him by following the recruitments rules of 1997.

Petitioner contends that his supersession is in violation of Article 14 and 16 of the Constitution of India.

3. On behalf of respondent no.1 a reply has been filed by Mrs. Aquella A. Phatarpekar, Deputy Secretary to the Government of Maharashtra in the department of Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, Mantralaya. It is therein set out that after adverting to the earlier OA the Government in 1995 took a conscious decision to revise the existing recruitment rules for appointment to the post of Assistant Director, Deputy Director, Joint Director and Additional Director Animal Husbandry. The rules were framed in consultation amongst others with the Maharashtra Public Services Commission. They have received approval of Governor of Maharashtra. It is based on these rules that Dr. V.V. Deshpande was promoted and took charge with effect from 22nd November, 1998. In sum and substance it is submitted that in the light of the conscious decision, taken by the Government not to fill post of Additional Director till recruitment rules are amended, that decision cannot be turned arbitrary and unreasonable. It is pointed out that the Tribunal on perusal of the documents has recorded a finding of fact that the conscious policy decision had been taken by the

Government in the year 1995 itself bearing in mind certain factual aspects and keeping in mind administrative and public interest to fill up the post of Additional Technical Director with officers possessing degree in Veterinary Science. While taking such conscious decision, the Government considered the nature of duties and the general set-up of the department and decided to fill in the post from amongst technical officers possessing degree of Veterinary Science. The amended rules came in to force on publication on 6th September, 1997. The Government however waited for the outcome of the proceedings before MAT. For all the above said reasons and other averments as set out in the reply, it is set out that the petition be dismissed.

4. MAT while disposing of the original application held that the petitioner before it had not acquired any vested rights for being considered for promotion in accordance with the old rules, in view of the policy decision taken by the Government which it found to be justifiable and consequently the applicant before it was not entitled for being considered. The Tribunal also recorded a finding of fact that a conscious decision was taken in the year 1995 that the post of Additional Director should be filled up from amongst technical officers possessing

degree of Veterinary Science. It is this order which is a subject matter of the present petition.

5. On behalf of the petitioner their learned Counsel submits that in order to apply the recruitment rules and to give a by-pass to the rules which were in force when the vacancy arose, it is necessary that the Government must take a conscious decision not to fill the post under the old recruitment rules, though it is open to the Government to repeal the old rules and bring in new rules. In the instant case it is submitted that no conscious decision was taken. Reliance for that purpose is placed on the judgment of the Apex Court in the case of **Dr. K. Ramulu and another Vs. Dr. S. Suryaprakash Rao and others, (1997)3 Supreme Court Cases 59** and in the case of **B.L. Gupta and another Vs. M.C.D., 1998 Supreme Court Cases (L&S) 532.**

. On the other hand on behalf of the respondent no.1 and 2, their learned Counsel submits that MAT has given a finding of fact that the Government had taken conscious decision not to fill in the post. Once there be a finding of fact it would not be open to this Court in the exercise of its extra ordinary jurisdiction to interfere with the said finding of fact. The order otherwise does

not disclose any error of law apparent on the face of record and in these circumstances it is submitted that the petition should be dismissed and rule discharged.

6. Having heard learned Counsel it is not possible to contend and neither has it been contended that it was not open to the Government to frame new recruitment rules. The law is settled that it is open to the Government to add qualifications which earlier did not exist under the old rules while framing recruitment rules depending on the nature of duties of the post and availability of candidates possessing better qualifications. Courts would not normally interfere in such an exercise unless it is shown to be patently arbitrary and/or malafide. In the instant case the affidavit of the Government filed before MAT and even today, it is clear that a decision to amend the rules was taken as far back as 1995. The petitioner claims for consideration to the vacancy which arose in January, 1997 on account of the retirement of the then incumbent. The averments in the petition are that this was done under pressure from Veterinary Officers who did not want the petitioner to be promoted. That plea appears not to have been raised before MAT but taken up for the first time before this Court. Even otherwise there is no material in

support of these allegations. The allegations to be considered must constitute malafides. There are no specific pleadings but only a general allegation. It will therefore, not be possible to consider the contention as has been raised in the pleadings.

7. That leads us for consideration, the only issue, whether the appointment of respondent no.3 and/ or non-consideration of the petitioner under the Rules of 1982 as amended in 1989, are contrary to the law laid down by the Apex Court in Dr. K. Ramulu and another, supra. Dr. K. Ramulu, (supra) was a matter arising out of in the matter of promotion as Assistant Director (A.P.) Animal Husbandry department. There were rules in force in 1995-1996. The Appellant had filed an original application before the Tribunal who had directed the respondent Government to prepare and operate the rules for the year 1995-1996 for promotion. It is this order which was the subject matter of the appeal before the Apex Court. From the judgment it appears that there were rules in force which mandated the Government to prepare a panel by September 30th of every year to be operative till the end of December of the succeeding year or preparation of a fresh panel, whichever is earlier. The old rules were repealed by 1996 rules. In terms of the new rules various posts were made interchangeable, for the

purpose of seniority, promotion and transfer. A decision had been taken by the Government as far as on 22nd November, 1988 to amend the rules by making necessary changes. After various suggestions the rules ultimately came to be made. The question that arose was whether the omission on the part of the Government, in preparing and finalising the panel for promotion of Assistant Veterinary Surgeons to the post of Assistant Director is vitiated by any inaction on the part of the Government and whether it was in violation of Rule 4 of the general rules. The appointment had to be based on merit and ability and made in accordance with the special rules. It also envisages that list of approved candidates requires to be prepared in accordance with the Rules. It shall be prepared ordinarily during the month of September every year on the basis of estimated vacancies as set in terms of sub-clause (iv) and 30th of September shall be reckoned as the qualifying date to determine the eligibility of the candidate for such appointment, which shall cease to be in force on the afternoon of 31st December of the succeeding year or till the new panel is prepared, whichever is earlier. The judgment also notes that the Government had taken a conscious decision not to fill up any of the pending vacancies until the process is completed which they started on administrative ground. The process was started and

the new rules came into force with effect from 12th June, 1996. After considering the facts and various judgments relied upon, the Apex Court noted that the mere fact of subsequent amendment does not take away right for consideration of appointment in accordance with the existing rules and that as a proposition of law that could not be disputed. The petitioners in that case were seeking to rely on the judgment of **Y.G. Rangayya Vs. J. Shrinivas Rao, 1983, Supreme Court, 852**. In that case the Court noted that the Government had amended the rules and applied the amended rules without taking any conscious decision not to fill up the existing vacancies, pending amendment of the rules on the date of new rules coming into force. On the facts of the case in Dr. Ramulu, the Court found that the Government had taken a conscious decision not to make any appointment till the amendment of the rules. Based on the said finding the Court held that the first respondent had not acquired any vested right for being considered for the post in accordance with the rules, in view of the policy decision taken by the Government and accordingly allowed the appeal and set aside the order of the Tribunal.

. So far as the judgment of B.L. Gupta and another, that is by Bench of two Judges, visa-vis Dr. K. Ramulu, Gupta's case was decided on 5th

September, 1997 and without taking into consideration the law as considered and declared in the case of Dr. K. Ramulu. Even otherwise the issue which arose here or which arose in Dr. K. Ramulu and another did not arise for consideration in Gupta's case. That judgment would be therefore of no assistance.

8. Coming to the facts of the present case and on perusal of the recruitment rules of 1982 as amended in 1989, promotion had to be done from persons holding the posts of Deputy Director or I.A.S. Officers. The Government took no decision to either fill in the post by promotion of persons holding the post of Deputy Director or by appointment by transfer of Officers from the cadre of Maharashtra Civil Services, Class I. It is therefore not open to the petitioner to contend that as he was holding the post of Deputy Director and others hold equivalent posts who alone could have been considered for promotion and who had vested right to be considered when a vacancy arose. Apart from that factually, there is finding recorded by the Tribunal that the respondent no.1 has taken a conscious decision in the year 1995 that the post of Additional Director should be filled up from amongst the technical officers possessing the degree in Veterinary Science. Considering the nature of the

duties and the general set up of the Animal Husbandry Department, the said decision does not appear to be unreasonable much less malafide. The rules were also under process. To our mind therefore as the Government had taken a conscious decision to fill in the posts by persons having technical qualifications and degree in Veterinary Science and that too as far back as 1995 and had set into motion the process of making the new rules, The finding of fact recorded by the Tribunal cannot be faulted. It cannot also be said that the said finding is perverse. The only contention as raised and urged on behalf of the petitioner is devoid of merits.

. In the light of that rule is discharged. There shall be no order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)